WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

January 5, 1998

WRITER'S DIRECT DIAL NUMBER
(202) 429-7384

FACSIMILE
(202) 429-7049

BY HAND

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Diskette of GTE Motion to Dismiss in CC Docket No. 97-211

Dear Ms. Salas:

Attached is a diskette in WordPerfect 5.1 for Windows format containing GTE's Motion to Dismiss, filed today in the above-captioned docket. Please feel free to contact the undersigned with any questions.

Respectfully submitted,

Jeffrey S. Linder

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of WorldCom, Inc. and	)	
MCI Communications Corporation	)	CC Docket No. 97-211
for Transfer of Control of	)	
MCI Communications Corporation to	)	
WorldCom, Inc.	)	

To: The Commission

MOTION TO DISMISS OF GTE SERVICE CORPORATION

GTE Service Corporation and its affiliated telecommunications companies[1] (collectively "GTE") herewith submits its motion to dismiss the above captioned applications of WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI") for transfers of control of MCI to WorldCom.[2] The WorldCom/MCI applications so egregiously fail to meet the Commission's clearly established information

---

1 GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, and GTE Hawaiian Tel International Incorporated.

2 Pursuant to Public Notice, DA 97-2494, released November 25, 1997, Petitions/Comments on the WorldCom/MCI Application are due on January 5, 1998. Therefore, this Motion to Dismiss is timely filed.

requirements for transfers in the merger context as to warrant their summary dismissal.[3] Indeed, rather than proffer an open, thoughtful explanation of the largest proposed telecommunications merger in history, as required by guidelines established in the Commission's *Bell Atlantic/NYNEX Order*,[4] WorldCom and MCI present a charade. Their transfer applications not only ignore the merger's numerous potential anti-competitive effects, but they fail to provide the most basic information required by *Bell Atlantic/NYNEX* to evaluate the public interest and competitive ramifications of this transaction. It's not that these applicants have tried to hide the ball, they just didn't bother to bring the ball to the game. Therefore, the applications of WorldCom and MCI should be summarily dismissed.

I. FCC STANDARDS FOR REVIEWING MERGERS: THE *BELL ATLANTIC/NYNEX ORDER*

Before approving a proposed transfer of control, the Commission is required by Sections 214(a) and 310(d) of the Communications Act to consider "the effects of the transfer on competition."[5] Through a series of recent merger orders, including proceedings in which MCI was a participant, the Commission has made it abundantly clear that its detailed framework for evaluating a merger's public interest and

---

[3] GTE is filing simultaneously herewith a Petition to Deny the requested transfer and a Request to Inspect Protected Information.

[4] *NYNEX Corp. and Bell Atlantic Corp., Memorandum Opinion and Order*, File No. NSD-L-96-10, FCC 97-286 at (rel. Aug. 14, 1997) ("*Bell Atlantic/NYNEX Order*").

[5] *Pittencrieff Communications, Inc. and Nextel Communications, Inc., Memorandum Opinion and Order*, CWD No. 97-22, DA 97-2260 at ¶ 8 (rel. Oct. 24, 1997).

competitive effects requires applicants to provide detailed information regarding, among other things: (1) the definition of product markets; (2) the definition of geographic markets; (3) the identity of significant actual or potential competitors; and (4) a determination of whether there are public interest benefits that enhance competition and therefore outweigh any anti-competitive effects.[6] These standards are universal requirements and they apply to all horizontal mergers. As will be shown, however, the WorldCom/MCI applications fail, by any measure, to meet all of these requirements.

A. The Applicants Must Prove that the Merger is in the Public Interest

Let there be no mistake, it is the *applicants* in these proceedings who "bear the burden of demonstrating that the proposed transaction is in the public interest."[7] Indeed, the FCC's public interest standard requires WorldCom and MCI to show that their merger will not "substantially . . . lessen competition . . . [or] . . . create a monopoly;"[8] and that the merger also "will enhance competition."[9] In addition, WorldCom and MCI must show in their applications that any "harms to competition . . .

---

6 The Commission's guidelines were forged from its consideration of three significant mergers in 1997. *See Pacific Telesis Group and SBC Communications, Inc. Memorandum Opinion and Order,* Rpt. No. LB-96-32, FCC 97-28 (rel. Jan. 31, 1997); *NYNEX Corp. and Bell Atlantic Corp., Memorandum Opinion and Order*, File No. NSD-L-96-10, FCC 97-286 at XX (rel. Aug. 14, 1997); *MCI Communications Corp. and British Telecommunications PLC, Memorandum Opinion and Order*, GN Docket No. 96-245, FCC 97-302 (rel. Sept. 24, 1997) ("*BT/MCI Order*").

7 *Bell Atlantic/NYNEX Order* at ¶ 2.

8 *Id.* at ¶ 33 (citing 15 U.S.C. § 18.21(a) (1997)).

9 *Bell Atlantic/NYNEX Order* at ¶ 2.

are outweighed by benefits that enhance competition."[10] Therefore, through the presentation of facts, data or other documentation, WorldCom and MCI must demonstrate the benefits, if any, that will flow from the merger. They must then show, by way of fact and not conjecture, that those benefits outweigh any resulting harms, such as "enhancing market power, slowing the decline of market power."[11]

B. The Applicants Must Prove that the Merger Will Not Eliminate Potentially Significant Sources of Competition

As a means to further the pro-competitive policies and goals of the Telecommunications Act of 1996, the *Bell Atlantic/NYNEX Order* also places on merger applicants "the burden of showing that the proposed merger would not eliminate potentially significant sources of competition" that the Act "sought to create."[12] Here, the Commission noted its specific concern about "mergers between companies that are potential rivals,"[13] such as the instant case, and pledged to "scrutinize skeptically any merger that appears likely to remove a firm that might prove a significant competitor in markets that are just opening to competition."[14] At its heart, the *Bell Atlantic/NYNEX Order* requires WorldCom and MCI to include in their applications information sufficient

---

10 *Id.*

11 *Id.*

12 *Id.* at ¶ 3; *see also BT/MCI Order* at ¶ 4.

13 *BT/MCI Order* at ¶ 5.

14 Id. at ¶ 41.

to "prove that, on balance, their merger will enhance and promote, rather than eliminate or retard . . . ," other sources of competition.[15]

C. The Applicants Must Establish the Relevant Product Market, Geographic Market, and the Most Significant Market Participants

Not only do WorldCom and MCI bear the burden to meet the public interest standard, the FCC also requires the applicants to provide the grist for the mill in the Commission's merger analysis – that includes, among other things, establishing "the relevant [product and geographic] markets."[16] Furthermore, applicants must identify those companies in each relevant product and geographic market "that are the most significant market participants."[17]

II. THE WORLDCOM/MCI APPLICATIONS FAIL TO MEET THE STANDARDS SET IN THE *BELL ATLANTIC/NYNEX ORDER*

A. WorldCom and MCI Failed to Show that the Proposed Merger is in the Public Interest

WorldCom's public interest showing is virtually nonexistent, consisting of a handful of unsupported claims regarding multibillion dollar synergies, efficiencies, and economies that will somehow materialize to enhance competition in local and international services.[18] However, despite their grandeur, these claims are floated unsupported by facts or data. The applications guarantee that "the two companies will

---

15 *Bell Atlantic/NYNEX Order* at ¶ 3.

16 *Id.* at ¶ 49. (citing . . .)

17 *Id.* at ¶ 58.

18 *Id.* at ii.

accelerate competition – especially in local markets – by creating a company with the capital, marketing abilities, and state-of-the-art network to compete against incumbent carriers,"[19] but do not reveal how this transformation of the local market will occur or quantify the actual benefit to consumers. And where the companies declare that "[s]ubstantial synergies are expected to be realized by combining the long distance and local operations of MCI and WorldCom to achieve better utilization of the combined network and operational savings...,"[20] there is no quantitative determination of how those benefits will be achieved or where they will flow – to the public, or solely to the applicants.

B. WorldCom and MCI Failed to Prove that the Proposed Merger Will Not Eliminate Potential Significant Sources of Competition

WorldCom's entire discussion of the anti-competitive effects of the merger consists, almost verbatim, of the following claims:

- "[N]either WorldCom nor MCI is a dominant carrier."[21]
- "[T]he revenue shares of WorldCom and MCI are minimal in the sector on which capital investment and expansion programs primarily focus: local services (both domestic and international)."[22]
- "[N]either WorldCom nor MCI controls bottleneck facilities."[23]

---

19 *Id.* at iv.

20 *Id.* at ¶ 36.

21 WorldCom Application at 38.

22 *Id.*

23 *Id.* at 39.

- "Nor is the proposed Merger likely to have any significant adverse impact on the Commission's ability to enforce regulatory oversight responsibilities, given WorldCom and MCI's lack of market power and foreign affiliation."[24]

- "The Merger is . . . unlikely to increase the likelihood of coordinated action among other industry players because the long distance industry, rather than being highly concentrated, epitomizes the competitive marketplace."[25]

- "[N]o precluded competitor who has previously been deterred or prevented by regulatory barriers from entering the market is being removed from the market by the Merger at a time when barriers that previously had precluded its entry are being removed."[26]

This extraordinary exercise in brevity attempts to condense the competitive effects of a $40 billion merger, involving a variety of product lines in markets stretching from the local loop around the globe, into a mere two paragraphs. In explanation, WorldCom and MCI boldly assert that "there are no specific anti-competitive concerns, such as enhancement of a party's existing market power to be overcome," and, that "[m]ost of the activities of WorldCom and MCI are complementary rather than directly competitive."[27] Notably absent from these calm assurances, however, are data concerning the respective telecommunications interests of the two companies, their market shares, their facilities or the extent of their competitive overlaps. Indeed, there are no studies, data, or other information offered to corroborate any of the claims. There is no basis to support the contentions made by the applicants regarding their

---

24 *Id.* at 39-40.

25 *Id.* at 40.

26 *Id.*

27 *Id.* at 38, 27.

merger's anticompetitive effects, therefore, their applications should be summarily dismissed.

C. WorldCom and MCI Failed to Establish the Relevant Product Market, Geographic Market, and the Most Significant Market Participants

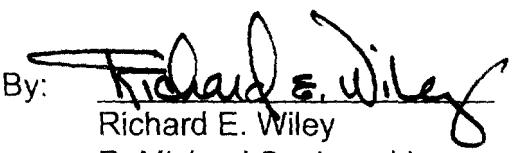
Similarly, nowhere in the application have WorldCom and MCI included an analysis of the relevant product markets, the relevant geographic markets, or the most significant market participants to be affected by this merger. The burden to produce this information is applicants. Their failure to do so warrants the dismissal of their applications.

III. CONCLUSION

WHEREFORE, GTE SERVICE CORPORATION and its affiliated telecommunications companies hereby respectfully request the Commission to dismiss the applications of WorldCom, Inc. and MCI Communications Corporation for transfer of Control of MCI Communications Corporation.

Respectfully submitted,

GTE SERVICE CORPORATION

By: 

Richard E. Wiley
R. Michael Senkowski
Jeffrey S. Linder
Peter D. Shields

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

William P. Barr, Executive Vice President & General Counsel
and
Ward W. Wueste, Vice President
Deputy General Counsel

GTE SERVICE CORPORATION
One Stamford Forum
Stamford, CT 06904

January 5, 1998

558269

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 1998, I caused copies of the foregoing Motion to Dismiss to be delivered by first class U.S. mail to the following:

Michael H. Salsbury
Mary L. Brown
Larry A. Blosser
MCI COMMUNICATIONS CORPORATION
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-3606

Andrew D. Lipman
Jean L. Kiddoo
SWIDLER & BERLIN, CHTD.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Catherine R. Sloan
Robert S. Koppel
WORLDCOM, INC.
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

*Chief, Network Services Division
Federal Communications Commission
2000 M St., N.W., Room 235
Washington, D.C. 20554
(2 copies)

*International Reference Room
International Bureau
Federal Communications Commission
2000 M St., N.W., Room 102
Washington, D.C. 20554
(2 copies)

*Wireless Reference Room
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M St., N.W., Room 5608
Washington, D.C. 20554
(2 copies)

*John Nakahata
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

*Chairman William F. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

*Regina Keeney
Federal Communications Commission
2000 M Street, N.W., 8th Floor
Washington, D.C. 20554

*Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

*Paul Misener
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

*Jane Mago
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

*Helgi Walker
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

*James Casserly
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

*Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

*Rick Chessen
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

*Richard Metzger
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

*Karen Gulick
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

*Paul Gallant
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

*Susan Fox
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

*Ari Fitzgerald
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

*Commissioner Michael Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

*Peter E. Tenhula
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

*Kyle D. Dixon
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

*Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

*James L. Casserly
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

*John Muleta
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

*Richard Welch
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

*Larry Strickling
Federal Communications Commission
1919 M Street, N.W., Room 650L
Washington, D.C. 20554

*Christopher Wright
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

*Daniel Phythyon
Federal Communications Commission
1919 M Street, N.W., Room
Washington, D.C. 20554

*Ruth Milkman
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

*Diane Cornell
Federal Communications Commission
2000 M Street, N.W., 8th Floor
Washington, D.C. 20554

*David Solomon
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

*Paula Michele Ellison
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

*Kevin Martin
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

*Gregory Cooke
Federal Communications Commission
2000 M Street, N.W., Room 210R
Washington, D.C. 20554

*Carol Mattey
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

*Rebecca Dorch
Federal Communications Commission
1919 M Street, N.W., Room 658
Washington, D.C. 20554

*International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036

Robin B. Walker

* via hand delivery